IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1170 of 2007

Pakkirisamy .. Petitioner

Vs.

1. The State of Tamilnadu
rep. by its Secretary to Government
Home, Prohibition & Excise Department
Fort St.George, Chennai-9.

2. The District Collector
and District Magistrate
Nagapattinam District
Nagapattinam. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.O.S.Thilak Pasumbadiyar
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R
(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu - Vaithi alias Vaithiyalingam, son of Somu, brother of the petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Bootlegger and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

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2.1. The order of detention dated 28.7.2007 came to be passed by the second respondent on the basis of the ground case in Crime No.1512 of 2007 on the file of Nagapattinam Prohibition Enforcement Wing for the offences punishable under Sections 4(1)(aaa), 4(1)(i) read with 4(1-A) of the Tamil Nadu Prohibition Act. On 16.7.2007 at 1400 Hours, the Inspector of Police, Prohibition Enforcement Wing, Nagapattinam along with his police party proceeded on a prohibition raid to Sithaimoor Village of Thirukkuvalai Police Station. During the course of the raid, the police party found the detenu selling illicit arrack from a 120 litres capacity lorry tube to unknown person, who escaped seeing the police party. The detenu also tried to run away from the scene but was apprehended by the police party. The contraband was seized. The samples were sent for chemical analysis. The Assistant Director, Regional Forensic Science Laboratory, Thanjavur, in his report, opined that the samples contained 5.7%mg of Atropine per 100 ml, and the Assistant Medical Officer, Government District Head Quarters Hospital, Nagapattinam opined that the consumption of such arrack mixed with atropine would endanger life, even if intensive treatment is given to the patient.

2.2. Apart from the above, the detaining authority also took note of five adverse cases pending against the detenu, viz., Crime Nos.209, 873, and 1291 of 2007 on the file of the Nagapattinam Prohibition Enforcement Wing for the offences punishable under Sections 4(1)(aaa), 4(1)(aa) read with 4(1-A), and 4(1)(aa) of the Tamil Nadu Prohibition Act; and Crime Nos.48 and 89 of 2007 on the file of the Thirukkuvalai Police Station for the offences punishable under Sections 4(1)(aaa) read with 4(1-A) and 4(1)(aaa) of the Tamil Nadu Prohibition Act.

2.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order and public health, passed the impugned order.

3. Challenging the said detention, the brother of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records relating to the order made in C.O.C.No.38 of 2007,d ated 28.7.2007 in detaining the detenu under 2-b of Tamil Nadu Act 14 of 1982, as a bootlegger, to quash the same and to direct the respondents to produce the detenu, who is detained at Central Prison, Trichy, before this Court and to set him at liberty.

4. Heard Mr.O.S.Thilak Pasumbadiyar, learned counsel for the petitioner and Mr.N.R.Elango, learned Additional Public Prosecutor for the respondents.

5. The only contention advanced by the learned counsel for the petitioner is that there is considerable delay in considering the representation and the same has rendered the detention illegal.

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6.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

6.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

6.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

6.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

6.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

7. In the instant case, the impugned order of detention came to be passed on 28.7.2007. A representation was made to the Government on 10.8.2007 and the same was received by it 13.8.2007. Remarks were called

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for from the detaining authority on 14.8.2007. The detaining authority received the said representation on 17.8.2007, but remarks of the Sponsoring authority were called for only on 14.9.2007, viz., after 19 days, excluding 9 public holidays. There is no convincing reply on behalf of the State for the said delay. We find some force as well as substance in this contention.

8. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

9. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

The delay on nineteen days which stands unexplained would fatalise the detention attracting Article 22 of the Constitution of India and therefore, the petition must succeed and the same is ordered as prayed for. The detention order dated 28.7.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case.

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Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To:

1. The Secretary to Government
   State of Tamilnadu
   Home, Prohibition and Excise Department
   Fort St.George, Chennai - 9.

2. The District Collector
   and District Magistrate
   Nagapattinam District
   Nagapattinam.

3. The Public Prosecutor
   High Court, Madras.

4. The Superintendent,
   Central Prison, Tiruchirapalli.

5. The Joint Secretary to Government,
   Public (Law & Order) Department,
   Fort George, Chennai-9.

VG(CO)
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